

TITLE 22

EMERGENCY REGULATIONS

ALTERNATIVE MANAGEMENT STANDARDS FOR TREATED WOOD WASTES

Department Reference Number: R-2006-07

Office of Administrative Law Emergency Number: 06-1221-04E

FINDING OF EMERGENCY

The Department of Toxic Substances Control (DTSC) finds adoption of the attached regulations for management of "Treated Wood Waste" (TWW) to authorize the continued appropriate disposal of TWW is necessary in for the immediate preservation of public health and safety and general welfare order.

AUTHORITY AND REFERENCE

These regulations are being adopted under the following authorities:

1. Health and Safety Code subsection 25150.7(g). This subdivision directs DTSC to adopt, by regulation, alternative management standards for TWW.
2. Health and Safety Code section 25150. This section directs DTSC to adopt standards for the management of hazardous wastes.
3. Health and Safety Code section 58012. This section grants DTSC general authority to adopt regulations.

These regulations implement, interpret, or make specific the following:

1. Health and Safety Code section 25150.7. This section along with Health and Safety Code section 25150.8 establishes the Legislative intent in directing the management of TWW, including the parameters by which solid waste facilities shall accept TWW.
2. Health and Safety Code section 25150.8. This section along with Health and Safety Code section 25150.7 establishes the Legislative intent in directing the management of TWW, including defining treated wood, mandating appropriate disposal, banning activities that pose a risk to human health and the environment, and prescribing the parameters by which DTSC shall develop alternative standard regulations.
3. Health and Safety Code section 25150. This section directs DTSC to adopt standards for the management of hazardous wastes.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

Existing Law

Effective January 1, 2007, a specific subsection of California Law that addresses disposal of TWW will become inoperative. Health and Safety Code sections 25150.7 and 25150.8 were adopted to address the unique circumstances associated with the generation and management of TWW. TWW is a ubiquitous waste; typically poses a limited risk to human health and the environment; is generated by a broad range of industries, businesses, and homeowners; and, statewide, is generated in quantities significantly larger than typical hazardous waste categories. As such, the Legislature, in consultation with industry, business, and environmental stakeholders, developed generalized management standards to address the issues unique to the handling of TWW and established a framework for appropriate disposal of TWW. Specifically, the statutes establish alternative management standards for TWW that are less stringent than those required for other hazardous wastes, facilitate the management and disposal of TWW by the broad range of TWW generators that tend to be less knowledgeable of hazardous waste law, and authorize TWW managed under the alternative standards to be disposed to approved composite-lined solid waste landfills. Final disposal to an appropriate solid waste landfill provides for the efficient, economical disposal of a ubiquitously generated waste while addressing the specific chemical characteristics of TWW that pose environmental risk. Disposal to approved solid waste landfill also diverts TWW from hazardous waste landfills that could be overwhelmed by the volume of TWW generated in California. Key to the application of alternative management standards to TWW is an exemption found in Health and Safety Code subsection 25150.7(e) that relieves generators and handlers from the management requirements applicable to hazardous wastes. This specific exemption allows TWW to be managed and disposed in accordance with the alternative standards.

In order to establish comprehensive management standards for TWW, the Legislature directed DTSC to develop regulations that provide specific alternative management standards for TWW. Through a rulemaking process involving technical research, public workshops, and public comment on draft regulatory language, DTSC developed proposed regulatory language and has prepared associated documents in compliance with the Administrative Procedures Act (the 45-day public comment period for the permanent regulations commenced on November 24, 2006). DTSC, however, has determined that the rulemaking process will not be completed prior to the inoperability date of Health and Safety Code subsection 25150.7(e). As a result, alternative management standards for TWW will be unavailable from January 1, 2007 until the rulemaking adopting permanent TWW regulations can be completed.

The alternative management standards of these emergency regulations extend the generalized management standards of Health and Safety Code subsection 25150.7(e) for one hundred twenty (120) days in order for the rulemaking process of the permanent regulations to be completed and for alternative management standards to be adopted. These emergency regulations are necessary and must be adopted immediately to ensure that TWW continues to be disposed in a manner protective of human health and the State's groundwater resources while preventing the large volumes of TWW from overwhelming the State's capacity to manage and dispose of other hazardous wastes. Furthermore, the absence of accessible alternative management/disposal standards for TWW would result in the enforcement of full hazardous waste requirements on generators typically unfamiliar with hazardous waste law, possibly unable to comply with hazardous waste requirements, and more likely to defer to inappropriate and illegal disposal options, disrupting the general welfare.

The Proposed Regulations

As described above, the Legislature directed DTSC to develop regulations that provide specific alternative management standards for TWW before the January 1, 2007 sunset date for existing standards. In response to this directive, DTSC has developed proposed regulatory language and prepared associated documents in compliance with the Administrative Procedures Act (APA). However, DTSC has determined that the rulemaking process will not be completed prior to the inoperability date under Health and Safety Code subsection 25150.7(e) because the 45-day review period required under the APA will run past that date. This will result in the alternative management standards for TWW not being available after until the rulemaking adopting permanent TWW regulations can be completed. As a result of this delay, DTSC proposes to adopt emergency regulations that extend the alternative management standards of Health and Safety Code subsection 25150.7(e) for one-hundred-twenty (120) days in order for the rulemaking process of the permanent regulations to be completed and for permanent alternative management standards to be adopted. The proposed emergency regulations, in effect, duplicate the language of the alternative management standards found in Health and Safety Code subsection 25150.7(e).

Section 66261.9.5: This section is added to article 1, chapter 11, and specifies that treated wood waste is exempt from chapter 6.5, division 20 of the Health and Safety Code and regulations under division 4.5 of Title 22, California Code of Regulations when handled in accordance with alternative management standards for treated wood waste found in chapter 34. This section is necessary to ensure that treated wood waste handlers are informed of the exemption.

New Chapter 34: This chapter establishes the alternative management standards for certain treated wood waste and if handled in accordance with the standards is exempted from hazardous waste control law.

Section 67386.1: This section is necessary to establish the scope of the wastes that may be managed under these proposed regulations. This section states that Chapter 34 only applies to certain treated wood waste and specifically identifies those activities that make other treated wood waste ineligible for the Treated Wood Waste exemption.

Subsection 67386.1(a): This subsection limits the treated wood wastes that can be managed under these proposed regulations to treated wood wastes that are not regulated as hazardous waste under the Federal hazardous waste control law, RCRA, and its implementing regulations. This subsection implements Health and Safety Code subsection 25150.7(c)(1) which establishes the limitation. Note that the limitation is also separately necessary because DTSC cannot establish hazardous waste regulations which are less stringent than those applied by the federal hazardous waste control regulations in Title 40, Code of Federal Regulations, for wastes regulated under those federal regulations. The federal standards are the “minimum national standards” for management of hazardous waste.

Subsection 67386.1(b): This subsection introduces treated wood wastes to which the proposed regulations would not apply. This subsection states that treated wood waste that is exempted from hazardous waste management requirements by Health and Safety Code section 25143.1.5 is outside of the scope of these regulations. This subsection implements Health and Safety Code subsection 25150.7(c)(2).

Section 67386.2: This section defines terms used in the regulations so that the entities defined can be clearly identified and the duties and obligations of all parties managing the treated wood waste are clearly understood. Generally, the definitions used throughout the hazardous waste control law apply; this section adds specific definitions for this chapter of the regulations.

“Treated wood” This term establishes the class of materials which, when discarded, become treated wood waste. It is defined as wood treated with preserving chemicals registered under the federal pesticide control law, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

“Treated Wood Waste” This term identifies the material regulated under these regulations. This definition is used with two other definitions to determine if a “wood

waste” that is also “treated wood” is eligible for management under these proposed regulations.

“Wood Waste” This term is proposed to create a larger class of waste materials which consist of wood intended to be used as products and wood generated in the use of wood products. It includes most wood products sold as lumber and panel goods and wastes and offcuts from use of those products. The definition excludes wood production wastes such as forest residues, green waste, branches and stumps. The definition is used by identifying which wood wastes are also treated wood as defined in this proposed section. The intersection of those two sets is “treated wood waste,” the material regulated under these proposed regulations.

Section 67386.3: This section establishes requirements for disposal of treated wood waste. It sets forth language for the types of landfills that are eligible to accept treated wood waste for disposal. In addition, it places the predisposal requirements on solid waste landfills that accept for disposal treated wood waste.

Subsection 67386.3(a): This subsection establishes which landfills are eligible to accept for disposal treated wood waste. The regulatory language is consistent with the requirements in Health and Safety Code subsection 25150.7(d)(1).

Subsection 67386.3(b): This subsection establishes predisposal requirements on solid waste landfills that accept treated wood waste for disposal. These requirements are consistent with Health and Safety Code subsection 25150.7(d)(2) which requires solid waste landfills to follow certain predisposal standards including:

- (1) Prohibit the scavenging of treated wood waste under these regulations. Health and Safety Code subsection 25150.7(d)(2)(A) requires solid waste landfills disposing of treated wood waste to prevent scavenging.
- (2) Compliance with the handling requirements in section 67386.4. This is consistent with the requirements in Health and Safety Code subsection 25150.7(d)(2)(B) and clarifies the provisions in Health and Safety Code subsection 25150.7(d)(2)(B).
- (3) Monitoring of the composite-lined portion of the landfill where treated wood waste has been disposed. Discontinue disposal of TWW if a release is detected. This is consistent with the statutory alternative management standards in Health and Safety Code subsection 25150.7(d)(2)(C).

Section 67386.4: This section establishes the conditions under which TWW may be handled.

Subsection 67386.4(a): This subsection requires management to prevent scavenging of treated wood waste under these regulations. Scavenged wood exits the hazardous waste management system and can be burned or used improperly with no controls and no protections. It is necessary to preclude scavenging of treated wood waste under these streamlined standards. Prevention of scavenging was a component of the statutory standards pursuant to Health and Safety Code subsection 25150.7(e)(1)(A) and is a required component of these regulations pursuant to Health and Safety Code subsection 25150.7(g)(2)(A). Thus, this subsection is necessary to implement these statutory provisions.

Subsection 67386.4(b): This subsection prohibits disposal of treated wood waste to land except as allowed in proposed section 67386.3. This prohibition is necessary to implement the mandate of Health and Safety Code section 25150.7 that disposal be allowed consistent with and limited to that allowed by Health and Safety Code subsection 25150.7(d). All other disposal under these regulations would be inconsistent with that statute.

Subsection 67386.4(c): This subsection is necessary to comply with the statutory requirement of Health and Safety Code subsection 25150.7(e)(1)(C), that treated wood waste is not burned or recycled except when the activity is done in accordance with the applicable requirements in Chapter 6.5 of Health and Safety Code.

Subsection 67386.4(d): This subsection establishes the storage requirements for treated wood waste. The standards are consistent with Health and Safety Code subsection 25150.7(e)(1)(D) and are necessary to ensure that water does not wash sawdust and other small particles and pieces of treated wood waste from the accumulated wood and to ensure that rainwater does not leach hazardous constituents from the treated wood waste into the environment.

Subsection 67386.4(e): This subsection prohibits commingling of treated wood waste with other wastes under these proposed regulations. This provision is necessary to ensure that treated wood waste is not hidden in large volumes of other construction or other waste and sent to ineligible landfills.

Subsection 67386.4(f): This subsection establishes the personal protection requirements when workers are handling treated wood waste. The standards are consistent with Health and Safety Code subsection 25150.7(e)(1)(F).

STATEMENT OF FACTS SUPPORTING FINDING OF EMERGENCY

General Welfare

Alternative Management/Disposal Infrastructure: TWW by definition is a hazardous waste with its hazardous characteristics solely due to the presence of preservatives registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Due to the ubiquitous nature of TWW, the relatively low risk to human health when managed appropriately, and the unfamiliarity with hazardous waste law by the majority of TWW generators, the Legislature, in consultation with stakeholders, regulators, and the scientific community enacted statutes 2004, chapter 597 (AB 1353), which establishes temporary alternative management standards for TWW. These temporary alternative standards address the unique circumstances associated with TWW and provide a management/disposal process for TWW that is accessible and understandable to the broad range of TWW generators most of which do not generate other hazardous wastes, are not familiar with the hazardous waste control law, and do not currently comply with its standards. The alternative standards provide an efficient and economical management/disposal process that addresses the specific human and environmental hazards associated with TWW without the more restrictive requirements of the hazardous waste law. AB 1353 also directs DTSC to develop comprehensive alternative management standards for TWW and to adopt those standards in regulation.

AB 1353 was enacted as Health and Safety Code sections 25150.7 and 25150.8. Health and Safety Code sections 25150.7 and 25150.8 currently provide the sole management standards applicable to TWW. Subsection 25150.7(e) prescribes temporary alternative management standards and subsection 25150.7(g) directs DTSC to develop permanent alternative management standards by, January 1, 2007. The Legislature intended TWW management/disposal to be transitioned from the temporary statutory standard to the permanent regulatory standard. Critical to the temporary alternative management standards is an exemption found in subsection 25150.7(e) that exempts TWW, managed in accordance with the temporary alternative standards, from the hazardous waste requirements of the Health and Safety Code. Without this exemption, TWW would be subject to regulation under full hazardous waste requirements. That date, January 1, 2007, therefore, corresponds to the date the statutory exemption (and alternative standards) expires and the date the Legislature intended DTSC to have adopted alternative management standards in regulation.

As discussed above, DTSC has determined that the rulemaking process, developing and adopting alternative management standards for TWW, will not be completed in time to provide a continuous transition from the temporary statutory alternative standards to

the permanent regulatory alternative standards. In the interim, TWW would be required to be managed as a hazardous waste. Because of the level of technical knowledge required to comply with hazardous waste law and because of the added expense of complying with hazardous waste requirements, most TWW generators would find it impossible to comply. The expected result would be the accumulation of TWW at the site of generation, abandonment of TWW, disposal to unlined solid waste landfills, and burning of TWW, all of which would be illegal and pose a risk to human exposure and environmental contamination.

In developing alternative management standard regulations, DTSC has determined that the appropriate handling/disposal of TWW requires a comprehensive infrastructure of transfer facilities capable of accepting TWW from non-technical generators and safely forwarding the TWW to approved composite-lined landfills. DTSC's proposed alternative standards would authorize certain solid waste facilities (under specified conditions) to accept and transfer TWW for final disposal. If management standards for TWW default to full hazardous waste requirements, no infrastructure currently exists to fulfill this function. In addition, hazardous waste law would require any facility accepting and transferring TWW to comply with hazardous waste facility requirements including the requirement to acquire a permit prior to accepting TWW. Hazardous waste permitting requirements are complex, typically involve extensive application preparation and review, and, as a result incur additional costs. It is, therefore, doubtful that a TWW management infrastructure could be effectively developed under a hazardous waste format.

The lack of TWW infrastructure is further exacerbated by the quantity of TWW typically generated by inexperienced generators (e.g., homeowners, small businesses). Current hazardous waste law provides certain allowances for such "small quantity" generators that reduces the handling and administrative requirements and, as a result, the cost to these generators. TWW, however, is typically generated in quantities much larger than what is allowed under hazardous waste small quantity exemptions (e.g., self transport of hazardous waste without a hazardous waste manifest, identification number exemption for households, etc.). As a result, few, if any, TWW generators would be eligible for management standards other than full hazardous waste requirements, and most would be unable or unwilling to comply with hazardous waste standards.

Hazardous Waste Infrastructure Capacity: DTSC estimates of TWW generation suggest that for calendar year 2007 approximately 350,000 tons of TWW will be generated. If managed as a hazardous waste, the vast majority of TWW would be landfilled to a hazardous waste landfill. For calendar year 2005 (the last year for which data is complete), approximately 700,000 tons of hazardous wastes were landfilled in

California. Diversion of all TWW to hazardous waste landfills could, therefore, increase total demand on California's hazardous waste landfills by 50%. With only two operating hazardous waste landfills and no new facilities planned, California has a limited capacity to landfill hazardous wastes.

Infrastructure capacity issues are not limited to disposal. If managed as a hazardous waste, TWW generators would be required to maintain identification numbers issued and tracked by DTSC. TWW is generated by virtually every business and household in California; a percentage of which generates TWW in any specific year. DTSC currently maintains approximately 125,000 active identification numbers and typically issues approximately 25,000 new numbers per year. DTSC's capacity to issue and track identification numbers would be negatively impacted if even a moderate percentage of California's businesses and households apply for numbers for TWW.

Generators would also be required to document the transfer of TWW by using a hazardous waste manifest. Hazardous waste manifests are issued, recorded, and tracked by DTSC. As with generator identification numbers, DTSC's capacity to issue, record, and track hazardous waste manifests could be negatively impacted if even a moderate percentage of California's businesses/households are required to use hazardous waste manifests to transfer TWW.

All shipments of TWW would require an authorized hazardous waste transporter. Hazardous waste transporters are authorized and overseen by DTSC. The authorization process requires that hazardous waste transporters maintain liability insurance capable of reimbursing the cleanup cost in the case of a release of hazardous waste to the environment. These insurance policies are typically not easy to acquire and result in increased costs. In addition, the limited number of hazardous waste landfills in California (two), both of which are in southern California, requires that most shipments of TWW be transported long distances for disposal. Again, if even a moderate percentage of California's businesses/households are required to use a hazardous waste transporter to ship TWW to one of the two California hazardous waste landfills, existing (and easily activated) transporter resources could be quickly overwhelmed.

Public Health and Safety

Human Health and Environmental Hazards: Under the current statutory alternative management standards for TWW and the alternative management standards of the proposed permanent regulations, TWW may be generated, managed, and disposed by the generator (or their agent) with minimal cost, by complying with limited handling requirements, and by utilizing existing and familiar solid waste infrastructure. However,

on January 1, 2007, Health and Safety Code subsection 25150.7(e) becomes inoperable and TWW becomes subject to hazardous waste regulation. Without permanent alternative management standards adopted in regulation (or those proposed in these emergency regulations), TWW will, as of January 1, 2007, be subject to full hazardous waste management and disposal requirements. It is estimated that complying with the administrative, handling, and disposal requirements of hazardous waste would increase disposal costs of TWW by a factor of five.

AB 1353, enacted as Health and Safety Code sections 25150.7 and 25150.8, was intended to address the unique circumstances of TWW, most of which has been summarized above, and provide an accessible management/disposal process to the broad range of TWW generators. As demonstrated by the adoption of AB 1353 and the progress of the proposed permanent regulations, the consensus of stakeholders hold that full hazardous waste standards are inappropriate to TWW because they impose requirements that are unnecessary in addressing the risks associated with TWW and, therefore, result in unnecessary costs. For these reasons and the fact that large numbers of TWW generators are homeowners unfamiliar with hazardous waste law, DTSC estimates that large amounts of TWW will find its way to illegal disposal options.

The largest fraction of TWW generators do not generate other hazardous wastes, are not familiar with the hazardous waste control law, and do not currently comply with its standards. They do not have regulated storage and accumulation points, employee training and record keeping systems, or hazardous waste ID numbers. They currently dispose of wastes in the cheapest manner - generally non-hazardous landfill (trash) disposal. Imposition of existing hazardous waste control law standards instead of proposed alternative standards would require these generators to develop new training and management programs, utilize more expensive accumulation and transportation options, and subject them to fees and inspections by the local Certified Unified Program Agency, all disincentives towards proper management of their TWW.

Being a hazardous waste, TWW would be turned away from existing solid waste infrastructure. TWW generators with limited and more expensive management/disposal options may feel forced toward inappropriate disposal options, including disposal to unlined solid waste landfills, and burning.

By concealment in solid wastes, TWW may be illegally disposed with solid wastes. The vast majority of solid waste landfills in the State are unlined and are not constructed to modern landfill specifications requiring liners and leachate collection. Thus, the hazardous constituents of TWW, including arsenic, pentachlorophenol, and heavy metals, pose a serious threat to human health through leaching from landfills into

drinking water supplies, to neighbors because the landfills are not sited to handle hazardous waste, and to waste workers themselves because solid waste collection and disposal workers are not trained or equipped to handle hazardous wastes.

Burning of TWW poses an especially serious threat to human health. Burning releases hazardous constituents such as arsenic and heavy metals. These constituents are easily adsorbed or inhaled by persons contacting the TWW ash. Burning of arsenic treated wood burns the wood but does not destroy the arsenic. Based on the concentration of arsenic in some TWW, the ash from a single burned fence post could produce more than 100 lethal doses of arsenic. In addition to direct exposure, the ash from incinerated TWW provides mobile hazardous constituents that may easily be washed to surface and groundwater resources, thereby posing a serious threat to human health by contamination of drinking water supplies.

The largest fraction of these generators does not generate other hazardous wastes, is not familiar with the hazardous waste control law, and does not currently comply with its standards. They do not have regulated storage and accumulation points, employee training and record keeping systems, or hazardous waste ID numbers. They currently dispose of wastes in the cheapest manner - generally non-hazardous landfill (trash) disposal. Imposition of existing hazardous waste control law standards instead of proposed alternative standard would require these businesses to develop new training and management programs, utilize more expensive accumulation and transportation options, and subject their businesses to fees and inspections by the local Certified Unified Program Agency, all disincentives towards proper management of their TWW.

Effect of these Regulations

Paraphrasing the language of Health and Safety Code subsection 25150.7(e), the proposed emergency regulations will extend the alternative management standards for TWW from the statutory sunset date of January 1, 2007 a further one-hundred-twenty (120) days in order for the rulemaking process of the permanent regulations to be completed and for permanent alternative management standards to be adopted. The proposed emergency regulations will, therefore, allow for the continuous handling and disposal of TWW under alternative management standards that are less onerous than full hazardous waste requirements and more suitable to the specific characteristics of TWW and TWW generation.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

A Negative Declaration will be filed based on an Initial Study prepared by DTSC which

indicates that the project will result in no significant effect on the environment. These documents will be noticed and circulated for comment pursuant to the requirements of the CEQA Guidelines.

FISCAL IMPACT ESTIMATES

Mandates on Local Agencies and School Districts pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code: DTSC has determined that the proposed regulations will not place a new legal burden on local agencies or school districts. As with California businesses, local agencies will benefit from the less onerous and less expensive alternative management standards of the regulations compared to the full hazardous waste requirements that would apply to TWW if these regulations are not adopted.

Estimate of potential cost or savings subject to reimbursement pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code and other nondiscretionary costs or savings to local agencies: DTSC has determined that the proposed regulations will not place new costs on local agencies for management of their own wastes. The adoption of these regulations will result in significant cost saving when compared with the full hazardous waste requirements that would come back into effect on January 1, 2007. These regulations offer alternative management standards for TWW that are less onerous and less expensive than existing hazardous waste requirements.

Cost or Savings to Any State Agency: DTSC has determined that the proposed regulations will not have a significant adverse fiscal impact to State agencies.

Potential Impact on State Agencies and State/Federal Funds: DTSC has determined that the proposed regulations will not place new costs on state agencies for management of their own wastes, and will not impact State/Federal funds. The adoption of these regulations will result in significant cost saving when compared with the costs of complying with full hazardous waste requirements that would come back into effect on January 1, 2007. These regulations offer alternative management standards for TWW that are less onerous and less expensive than existing hazardous waste requirements.